

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|----------------|---|-----------------------|
| SEAN BUCCI |) | |
| Petitioner, |) | |
| |) | |
| v. |) | C.A. No. 13-11682-JLT |
| |) | |
| UNITED STATES, |) | |
| Respondent. |) | |

ORDER MODIFYING MEMORANDUM AND ORDER

TAURO, D.J.

On July 8, 2013, petitioner Sean Bucci (“Bucci”) filed a petition for writ of mandamus seeking an Order compelling the undersigned to render a decision on two motions filed in his criminal case, in connection with his motion to vacate pursuant to 28 U.S.C. § 2255. See Sean Bucci v. United States, CR 03-10330-JLT.

On July 15, 2013, this Court issued a Memorandum and Order (Docket No. 5) denying Bucci’s request for appointment of counsel, denying the petition, and dismissing the action. On July 19, 2013, Bucci filed a Letter (Docket No. 8) seeking clarification concerning the Memorandum and Order (Docket No. 5). Bucci claims that his petition was intended to be filed in the First Circuit Court of Appeals, and not in the District Court. He now requests that this case be deleted from the District Court dockets in its entirety in order to avoid any future confusion.

The Court finds that Bucci’s assertion that his petition was meant to be filed in the First Circuit Court of Appeals is supported by the caption on the petition itself. See Docket No. 1. Nevertheless, it was filed in the District Court, although it is not clear why. The Clerk’s Office opened this matter as related to Bucci’s criminal case.

In any event, the instant action has been dismissed and this case has been closed on the dockets of this Court. With on exception, this Court cannot find that Bucci has suffered any prejudice by the opening of this action in the District Court, or by the dismissal of this action, particularly where he was not assessed a filing fee under the Prison Litigation Reform Act. The one exception, however, is the possible impact of the three-strikes rule of 28 U.S.C. § 1915(g) because the dismissal was based on the merits.

Accordingly, in order to give Petitioner the benefit of the doubt that he never intended this case to be filed in the District Court, this Court hereby MODIFIES the Memorandum and Order (Docket No. 5) to reflect that it is the Court's intention that the dismissal of this action not be deemed to be a strike under § 1915(g).

To the extent that Bucci seeks to have this Court delete the entire case from the electronic docketing system, the request is DENIED. Given this Order, the record has now been clarified sufficiently. There is no good cause to remove the docket entirely from the Court's docketing system.

SO ORDERED.

/s/ Joseph L. Tauro
JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE

DATE: August 6, 2013